Calendar No. 121

99TH CONGRESS
1st Session

SENATE

REPORT
99-47

CONSUMER PROTECTION FROM FRAUDULENT MOTOR VEHICLE ODOMETER MODIFICATIONS

MAY 14 (legislative day, APRIL 15), 1985.—Ordered to be printed

Mr. DANFORTH, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 475]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 475) to amend the Motor Vehicle Information and Cost Savings Act to require certain information to be filed in registering the title of motor vehicles, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

Title IV of Motor Vehicle Information and Cost Savings Act provides that it is illegal for any person to disconnect or reset the odometer of any motor vehicle. The act also requires the Department of Transportation's [DOT] National Highway Traffic Safety Administration [NHTSA] to establish certain safeguards for the protection of purchasers with respect to the sale of motor vehicles having altered or reset odometers.

Current law requires that a written statement disclosing the odometer reading must be provided to the purchaser when a vehicle is sold. Federal law does not specify, however, the form in which the odometer reading disclosure must be made. Consequently, in many cases, the odometer reading disclosure is made on a piece of paper, other than the title, and given to the buyer. In such cases, the buyer can easily destroy the disclosure paper, roll back the odometer, and prepare a new disclosure for the next purchaser; the new disclosure would show the altered odometer reading.

S263-9.

According to DOT, only six States still have no place for odometer information on their titles. However, other States have no space for odometer readings on the reassignment forms on the backs of the titles and others have the requisite forms but do not always enforce their requirements that the forms be used.

Despite the positive efforts to combat odometer fraud in the majority of States, it remains very easy for a person to mail a certificate of title with high mileage to another person in one of the States not requiring the odometer mileage to be shown on titles and to obtain in return a new title without any odometer information. That person then can reset the odometer to a lower mileage figure.

S. 475, as reported, remedies the insufficiencies of current law with respect to the disclosure requirements of odometer mileage. S. 475 also increases the criminal and civil penalties applicable to odometer fraud.

Background and Need

Each year, 20 to 40 million used cars are sold in America. Of these cars, roughly 3 million have had their odometers rolled back, with an average rollback of 30,000 miles per car. Among some categories of used cars, such as leased cars—which are attractive targets because they are recent models with higher than average mileage—roughly 70 percent, according to NHTSA, have had their odometers altered before being sold to retail customers.

Odometer tampering is one of the most costly types of fraud in the United States. NHTSA estimates that odometer tampering costs consumers in excess of $2 billion annually. Odometer fraud is a very lucrative practice, with unearned profits from odometer tampering amounting to at least $200 for every 10,000 miles by which the odometer reading is reduced. According to NHTSA, the average price increase for a car with an altered odometer is approximately $1,050. Odometer fraud, therefore, is one of the fastest ways to make money; it only takes a few minutes to roll back an odometer. Further, the process is very difficult to detect, and the risk of getting caught is negligible.

Private sales of used cars, which involve generally only two parties and account for roughly 20 percent of used car sales, are not the major source of the odometer fraud problem. Most such fraud occurs in the commercial market, where a used car transaction can involve as many as 8 or 10 parties if it occurs in the wholesale market. Used car auctions, distributors, wholesalers, dealers, and used car lots of new car dealers often may be directly involved in fraud.

Testimony presented to the Commerce Committee by the National Automobile Dealers Association showed that odometer tampering frequently involves cars which have been sold through mass sales, such as auctions. Wholesalers generally buy large quantities of cars at auctions to sell to other wholesalers or to dealers. If a wholesaler does engage in odometer tampering, the following procedure would be typical. First, after buying a car, the wholesaler would roll back the odometer. Second, the wholesaler would acquire supporting paperwork. In most cases, the odometer disclosure

is made on a separate sheet of paper accompanying the title. The wholesaler then can alter the odometer reading or provide a new disclosure. In cases where the odometer reading is included on the title, the wholesaler either can alter the existing title or launder it completely, such as by titling the car in a State which does not require an odometer reading on the title. This is done easily without moving the car; a person need only send the information, together with a check, to a business associate in another State, who will have the car retitled. The new title contains no odometer reading and the wholesaler may then disclose whatever odometer reading the wholesaler chooses.

Such practices create a major problem for used car dealers. A dealer easily can unknowingly purchase a car with an altered odometer from a wholesaler. The dealer sells the car to a customer in good faith, but the customer in fact pays too much for the car because it has been driven much further than the mileage indicated on the odometer.

In addition to closing the current loopholes in State titling laws, another means of discouraging odometer fraud is to increase the penalties applicable to this crime contained in sections 412 and 413 of the Motor Vehicle Information and Cost Savings Act. The current civil penalty for odometer fraud is $1,000 per violation, to a maximum of $100,000 for a related series of violations. The criminal penalty is $50,000 and/or 1 year imprisonment. According to NHTSA, the most effective way to combat this fraud is to increase the maximum sentence to three years, converting odometer tampering into a felony. This would make violations much more likely to be prosecuted and would be more threatening to violators.

Legislative History

On February 21, 1985, the Commerce Committee conducted a hearing on oversight of the NHTSA and means of improving highway safety. Testimony was presented by NHTSA officials, highway safety and consumer groups, and representatives of automobile dealers and manufacturers. Among the subjects explored at this hearing was odometer fraud.

On April 18, the Committee considered S. 475 in executive session. The Committee ordered reported S. 475 without amendment, by a voice vote.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 9, 1985.

Hon. JOHN C. DANFORTH,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 475, a bill to amend the Motor Vehicle Information and Cost Savings Act to require certain information to be filed in registering the title of motor vehicles, and for other purposes. The bill was ordered reported by the Senate Committee on Commerce, Science, and Transportation, April 18, 1985. We expect that enactment of this bill will result in no cost to the federal government. The cost to state and local governments, however, could be several million dollars annually.

The bill is intended to reduce the incidence of odometer tampering by establishing uniform state standards related to motor vehicle titles and registration cards. The bill requires titles to be printed in intaglio printing and to display the car's mileage at the time of the transfer. It also requires all vehicle registration cards to include the cumulative miles shown on the odometer at that time. Although many states already meet the requirements for titling procedures, few require the odometer information on registration cards.

The cost to most states to meet the titling requirements is not expected to be significant. Recording odometer information on registration cards for the approximately 110 million passenger cars nationwide may impose a financial burden on states, however, because many states handle registration renewal by mail. If the bill were enacted, the states would have to contact the owner each time they received an application that didn't include the odometer reading, and then reprocess the application. For the first few years, until the public is educated, this could cost the states several million dollars annually. The bill does not require states to keep track of the odometer information in a central data base, although a number of state officials noted that in order to use the data to reduce fraud, they would need to develop such a system. Such an effort could increase state data processing costs by more than $10 million annually.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER,
Director.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation:

NUMBER OF PERSONS COVERED

Proposed subsections (d)(1) and (d)(2) in the first section of S. 475, as reported, provide that all States must require written disclosure of the odometer reading on a motor vehicle's title at the time of transfer of ownership of the motor vehicle and when the new owner is seeking to register the vehicle. The Committee understands, however, that only six States do not require that a vehicle's odometer reading be listed on its certificate of title.

Proposed subsection (d)(3) requires that States not issue a registration card for any motor vehicle used in interstate commerce unless the registration card contains an odometer reading. The majority of States at present do not require odometer readings on motor vehicle registration documents.

Proposed subsection (e) requires auction companies to maintain used car sales records for at least four years following the sale. This provision would apply to all motor vehicle auction companies.

Section 4 of S. 475 increases the civil and criminal penalties applicable to odometer tampering. These penalties would apply to persons convicted of this crime; the Committee anticipates that the stricter penalties will deter odometer tampering.

ECONOMIC IMPACT

The first section of S. 475, which requires disclosure of odometer readings on motor vehicles title certificates and registrations, would result in some States changing their current titling and registration procedures. This may result in some slight registration cost increases to motor vehicle owners, passed on as a result of increased State costs.

Proposed subsection (d)(4) however, allows States to submit to the Secretary of Transportation an alternative method for compliance with the titling and registration requirements of this act. The Secretary may approve such an alternative method if it is consistent with the purposes of proposed subsection (d) in the first section of this act.

Section 4 of S. 475 increases the civil and criminal penalties for odometer fraud. These increased penalty levels will result in greater fines being paid by persons convicted of odometer tampering.

PRIVACY

S. 475 will not have any adverse impact on the personal privacy of the individuals affected.

PAPERWORK

The imposition in the first section of S. 475 of written odometer disclosure requirements on title certificates and registration cards is expected to result in some increase of paperwork for State motor vehicle licensing agencies. As these new requirements would become part of existing registration procedures, no substantial paperwork increase is anticipated.

Proposed subsection (e) requires auction companies to maintain records of used motor vehicle sales for at least 4 years following such a sale. Auction companies will be required to keep the follow-

ing information: (1) the name of the seller and the buyer of the motor vehicle; (2) the motor vehicle's vehicle identification number; and (3) the odometer reading on the date on which the auction company took possession of the motor vehicle. This recordkeeping requirement is not expected to be burdensome to auction companies.

SECTION-BY-SECTION ANALYSIS

SECTION 1

Section 408 of the Motor Vehicle Information and Cost Saving Act (15 U.S.C. 1988) provides disclosure requirements for the transfer of ownership of motor vehicles. Section 408(a) specifies that when the ownership of a motor vehicle is transferred, the transferor must provide the following written information to the transferee: (1) disclosure of the cumulative mileage registered on the odometer; or (2) if the odometer reading is known to the transferor to be different from the number of miles the vehicle has actually traveled, disclosure that the actual mileage is unknown. Subsection (b) of section 408 provides that no transferor shall violate any rule prescribed under this section by the Secretary of Transportaion or give a false statement to a transferee in making any disclosure required by such rule. Subsection (c) of that section specifies that no transferee who, for purposes of resale, acquires ownership of a motor vehicle shall accept any written disclosure required by any rule prescribed by the Secretary under this section if such disclosure is imcomplete.

The first section of S. 475 amends section 408 of the Motor Vehicle Information and Cost Savings Act by adding new subsections (d) and (e) concerning registration of motor vehicles. This provision is aimed at creating a record which would enable a consumer to be better informed about the true mileage on a used vehicle. This record, in turn, will create a mechanism through which odometer trampering can be traced and violators, prosecuted.

New subsection (d)(1) provides that a motor vehicle whose ownership is transferred by any person to another person in interstate commerce may not be registered or licensed for use in any State, or used in interstate commerce, unless: (A) the application to the State by the motor vehicle's new owner for a certificate of title is accompanied by the prior owner's most recent registration card for the motor vehicle and the prior owner's title; and (B) the certificate of title (or other document indicating ownership) of the motor vehicle which is issued by the State to the new owner following such transfer: (i) is printed in bank note intaglio printing process; (ii) indicates on its face the mileage required to be disclosed by the transferor under section 408(a) of the Motor Vehicle Information and Cost Saving Act; and (iii) contains a space for the transferee to disclose (in the event of a future sale or other transfer of title by such transferee) the mileage at the time of such future transfer and to sign and date such disclosures.

New subsection (d)(2) provides that, in the case of an application for a new motor vehicle certificate of title, if the prior owner's title certificate contains a space for the disclosure of the mileage, when

the title certificate is submitted to the State under paragraph (1)(A) of this subsection, it shall contain a statement, signed and dated by the prior owner, of the mileage required to be disclosed by the prior owner.

New subsection (d)(3) provides that a State may not issue any registration card for a motor vehicle used in interstate commerce unless: (A) the application for the registration card contains the information specified in subsections 408(a) (1) and (2) of the Motor Vehicle Information and Cost Savings Act, determined as of the date on which the application is submitted by the owner of the motor vehicle; and (B) the registration card contains the information provided on such application.

New subsection (d)(4) provides that a State may submit to the Secretary of Transportation an alternative method for compliance with the requirements of new subsection (d) by motor vehicles registered or licensed for use in the State. The Secretary may promulgate regulations establishing procedures for the consideration and approval of such alternative methods of compliance. The Secretary may not approve an alternatives method unless the method is consistent with the purposes of subsection (d).

New subsection (e) provides that if a motor vehicle is sold at an auction, the auction company shall maintain a record for at least four years following such a sale. This record is to include: (1) the names of the seller and the buyer of the motor vehicle; (2) the motor vehicle's vehicle identification number; and (3) the odometer reading on the date on which the auction company took possession of the vehicle.

SECTION 2

This section amends section 402 of the Motor Vehicle Information and Cost Savings Act to include the definition of an "auction company" as used in this act. The term "auction company" means any person who takes possession (whether through consignment, bailment, or through any other arrangement) of a motor vehicle owned by another person for purposes of selling the motor vehicle at an auction.

SECTION 3

Subsection (a) of this section provides that paragraphs (1) and (2) of section 408(d) of the Motor Vehicle Information and Cost Savings Act, as added by the first section of S. 475, shall apply with respect to motor vehicles which are transferred more than 18 months following the date of enactment of this act.

Subsection (b) of this section provides that section 408(d) of the Motor Vehicle Information and Cost Savings Act, as added by the first section of S. 475, shall apply with respect to motor vehicles which are registered in any State more than 18 months after the date of enactment of this act.

Subsection (c) of this section provides that section 408(e) of the Motor Vehicle Information and Cost Savings Act, as added by the first section of S. 475, shall apply with respect to motor vehicles which are sold by an auction company more than 18 months after the date of enactment of this act.

Subsection (d) provides that the terms "motor vehicle" and "auction company", for purposes of this section, have the same meanings as used in the Motor Vehicle Information and Cost Savings Act.

SECTION 4

Subsection (a) amends section 412(a) of the Motor Vehicle Information and Cost Savings Act to increase the civil penalty for odometer tampering from $1,000 to $2,000.

Subsection (b) amends section 413(a) of the Motor Vehicle Information and Cost Savings Act to increase the imprisonment portion of the criminal penalty for odometer tampering from one year to three years, making this crime a felony. A violator would be subject to a maximum criminal penalty of $50,000 and/or 3 years' imprisonment.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

THE MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

Section 402 of that Act

DEFINITIONS

SEC. 402. As used in this title—

(1) The term "auction company" means any person who takes possession (whether through consignment, bailment, or through any other arrangement) of a motor vehicle owned by another person for purposes of selling such motor vehicle at an auction.

[(1)] *(2)* The term "dealer" means any person who has sold 5 or more motor vehicles in the past 12 months to purchasers who in good faith purchase such vehicles for purposes other than resale.

[(2)] *(3)* The term "distributor" means any person who has sold 5 or more vehicles in the past 12 months for resale.

[(3)] *(4)* The term "odometer" means an instrument for measuring and recording the actual distance a motor vehicle travels while in operation; but shall not include any auxiliary odometer designed to be reset by the operator of the motor vehicle for the purpose of recording mileage on trips.

[(4)] *(5)* The term "repair and replacement" means to restore to a sound working condition by replacing the odometer or any part thereof or by correcting what is inoperative.

[(5)] *(6)* The term "transfer" means to change ownership by purchase, gift, or any other means.

Section 408 of that Act

DISCLOSURE REQUIREMENTS

SEC. 408. (a)–(c) * * *

(d)(1) No motor vehicle, the ownership of which is transferred by any person to another person in interstate commerce, may be registered or licensed for use in any State, or used in interstate commerce, unless—

(A) the application to the State by the new owner of such motor vehicle for a certificate of title is accompanied by—

(i) the prior owner's most recent registration card for such motor vehicle; and

(ii) the prior owner's title (containing the information required under paragraph (2), where applicable);

(B) the certificate of title (or other document in dicating ownership) of such motor vehicle which is issued by the State to the new owner following such transfer—

(i) is printed in bank note intaglio printing process;

(ii) indicates on its face the mileage required to be disclosed by the transferor under subsection (a); and

(iii) contains a space for the transferee to disclose (in the event of a future sale or other transfer of title by such transferee) the mileage at the time of such future transfer and to sign and date such disclosures.

(2) In the case of an application for a new certificate of title for a motor vehicle, if the prior owner's certificate of title contains the space referred to in clause (iii) of paragraph (1)(B), when such certificate of title is submitted to the State under clause (ii) of paragraph (1)(A), it shall contain a statement, signed and dated by such prior owner, of the mileage required to be disclosed by such prior owner under subsection (a).

(3) No registration card may be issued in any State for any motor vehicle used in interstate commerce unless—

(A) the application for such registration card contains the information specified in paragraphs (1) and (2) of subsection (a), determined as of the date on which such application is submitted by the owner of the motor vehicle; and

(B) such registration card contains such information, as provided on the application.

(4) Any State may submit to the Secretary an alternative method for compliance with the requirements of this subsection by motor vehicles registered or licensed for use in the State. The Secretary may promulgate regulations establishing procedures for the consideration and approval of such alternative methods of compliance. No such alternative method may be approved unless the Secretary determines that such method is consistent with the purposes of this subsection.

(e) If any motor vehicle is sold at an auction, the auction company which owns or operates the facilities at which such auction takes place shall maintain a record for a period of at least four years following the date of such sale that includes—

(1) the name of the seller and the name of the buyer of the motor vehicle;

(2) the vehicle identification number of the motor vehicle; and

(3) the odometer reading on the date on which the auction company took possession of the motor vehicle.

Section 412 of that Act

CIVIL PENALTY

SEC. 412. (a) Any person who commits any act or causes to be done any act that violates any provision of this title or omits to do any act or causes to be omitted any act that is required by any such provision shall be subject to a civil penalty not to exceed [$1,000] *$2,000* for each such violation. A violation of any such provision shall, for purposes of this section, constitute a separate violation with respect to each motor vehicle or device involved, except that the maximum civil penalty shall not exceed $100,000 for any related series of violations.

(b) * * *

Section 413 of that Act

CRIMINAL PENALTIES

SEC. 413. (a) Any person who knowingly and willfully commits any act or causes to be done any act that violates any provision of this title or knowingly and willfully omits to do any act or causes to be omitted any act that is required by any such provision shall be fined not more than $50,000 or imprisoned not more than [one year] *three years,* or both.

(b) * * *

○